

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

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HENRY BENITEZ,

Plaintiff,

-v.-

9:05-CV-1160  
(NAM)(RFT)

B. MAILLOUX, Prison Guard, Upstate Prison, *et al.*,

Defendants.

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APPEARANCES:

HENRY BENITEZ  
Plaintiff, *pro se*  
97-A-2553  
Upstate Correctional Facility  
P.O. Box 2001  
309 Bare Hill Road  
Malone, New York 12953

RANDOLPH F. TREECE, U.S. Magistrate Judge

**ORDER**

The Clerk has sent to the court a civil rights Complaint, together with an Application to Proceed *In Forma Pauperis*, submitted for filing by *pro se* Plaintiff Henry Benitez, who is currently incarcerated at Upstate Correctional Facility.<sup>1</sup>

In his *pro se* Complaint, Plaintiff sets forth numerous claims arising out of his confinement at Upstate Correctional Facility in 2004. Plaintiff alleges, *inter alia*, that he has been denied proper and adequate medical care for his serious medical needs; false disciplinary charges were placed against him; he was assaulted by prison staff on July 20, 2004; he was denied meals, personal hygiene products and sanitary housing; he was retaliated against for filing grievances and lawsuits

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<sup>1</sup> Plaintiff has three other actions pending in this District. *Benitez v. Duquette*, 9:03-CV-0973 (LEK/RFT); *Benitez v. Locastro*, 9:04-CV-0423 (NAM/RFT); and *Benitez v. Ham*, 9:04-CV-1159 (NAM/GHL).

against staff at Upstate; his legal papers have been destroyed; and he has been denied access to the courts. Dkt. No. 1, Compl. For a more complete statement of Plaintiff's claims, reference is made to the entire Complaint.

As to Plaintiff's *In Forma Pauperis* Application, after reviewing the entire file, the Court finds that the Plaintiff may properly proceed with this matter *in forma pauperis*.

WHEREFORE, it is hereby

ORDERED, that Plaintiff's *In Forma Pauperis* Application (Dkt. No. 2) is granted.<sup>2</sup> The Clerk shall issue Summons and forward them, along with copies of the Complaint, to the United States Marshal for service upon the named Defendants. The Clerk shall forward a copy of the Summons and Complaint by mail to the Office of the Attorney General for the State of New York, together with a copy of this Order; and it is further

ORDERED, that the Clerk provide the Superintendent of the facility, designated by Plaintiff as his current location, with a copy of Plaintiff's authorization form (Dkt. No. 5), and notify the official that this action has been filed and that Plaintiff is required to pay the entire statutory filing fee of \$250.00 pursuant to 28 U.S.C. § 1915; and it is further

ORDERED, that the Clerk provide a copy of Plaintiff's authorization form (Dkt. No. 5) to the Financial Deputy of the Clerk's Office; and it is further

ORDERED, that a response to Plaintiff's Complaint be filed by the Defendants or their counsel as provided for in the Federal Rules of Civil Procedure after service of process on the Defendants; and it is further

ORDERED, that all pleadings, motions and other documents relating to this action be filed

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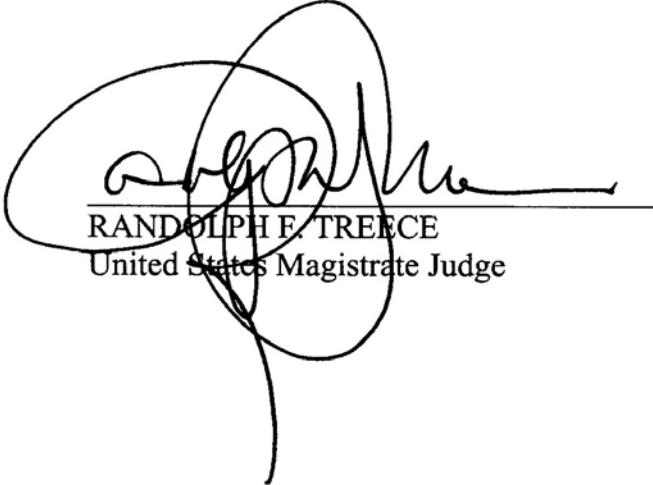
<sup>2</sup> Plaintiff should note that although the Application to Proceed *in Forma Pauperis* has been granted, Plaintiff will still be required to pay fees that he may incur in this action, including copying and/or witness fees.

with the Clerk of the United States District Court, Northern District of New York, 7th Floor, Federal Building, 100 S. Clinton St., Syracuse, New York 13261-7367. Any paper sent by a party to the Court or the Clerk must be accompanied by a certificate showing that a true and correct copy of it was mailed to all opposing parties or their counsel. Any document received by the Clerk or the Court which does not include a certificate of service showing that a copy was served upon all opposing parties or their attorneys will be returned, without processing.

Plaintiff must comply with any requests by the Clerk's Office for any documents that are necessary to maintain this action. All parties must comply with Local Rule 7.1 of the Northern District of New York in filing motions, which must be returnable before the assigned Magistrate Judge with proper allowance for notice as required by the Rules. Plaintiff is also required to promptly notify the Clerk's Office and all parties or their counsel of any change in Plaintiff's address; his failure to do so will result in the dismissal of this action. All motions will be decided on submitted papers without oral argument unless otherwise ordered by the Court, and it is further

ORDERED, that the Clerk serve a copy of this Order on the Plaintiff.

Date: May 15, 2006  
Albany, New York



RANDOLPH F. TREECE  
United States Magistrate Judge